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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ANNETTE CODY, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

PROMISES BEHAVIORAL HEALTH,  
LLC, a Delaware limited liability  
company; and DOES 1 through 25,  
inclusive,

Defendants.

Case No. 8:22-cv-1529

**CLASS ACTION COMPLAINT FOR  
VIOLATION OF PENAL CODE § 631**

## **INTRODUCTION**

1  
2 1. Plaintiff brings this action individually and on behalf of all other  
3 Californians similarly situated against Defendant for its illegal wiretapping of  
4 electronic communications with Defendant through Defendant's website,  
5 [www.recoveryranchpa.com](http://www.recoveryranchpa.com) (the "Website").

6 2. Unbeknownst to visitors to the Website, Defendant has secretly deployed  
7 "keystroke monitoring" software that Defendant uses to surreptitiously intercept,  
8 monitor, and record communications made through the chat feature on the Website.  
9 Defendant neither informs visitors nor obtains their express consent prior to this  
10 wiretapping. Defendant then shares the intercepted communications with at least one  
11 third party.

12 3. Defendant has violated the California Invasion of Privacy Act ("CIPA"),  
13 California Penal Code § 631, entitling Plaintiff and Class Members to relief.

## **JURISDICTION AND VENUE**

14  
15 1. This Court has subject matter jurisdiction of this action pursuant to 28  
16 U.S.C. Section 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100  
17 or more class members, (ii) there is an aggregate amount in controversy exceeding  
18 \$5,000,000, exclusive of interest and costs, and (iii) there is at least minimal diversity  
19 because at least one Plaintiff and Defendant are citizens of different states.

20 2. Pursuant to 28 U.S.C. Section 1391, this Court is the proper venue for this  
21 action because a substantial part of the events, omissions, and acts giving rise to the  
22 claims herein occurred in this District: Plaintiff is a citizen of California who resides in  
23 this District and Defendant conducted a substantial portion of the unlawful activity in  
24 this District.

25 3. Defendant is subject to personal jurisdiction in California based upon  
26 sufficient minimum contacts which exist between Defendant and California. Defendant  
27 also does business with California residents.

**PARTIES**

4. Plaintiff is a citizen of California residing within the Central District of California.

5. Defendant is a Delaware Limited Liability Company.

6. The above-named Defendant, along with its affiliates and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants.

8. Plaintiff is informed and believe that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

**FACTUAL ALLEGATIONS**

9. Without warning visitors or obtaining their consent, Defendant has secretly deployed wiretapping software on its Website. This software allows Defendant to surreptitiously record visitor interaction through the chat feature on Defendant’s website.

10. Defendant’s actions amount to the digital trifecta of looking over consumers’ shoulders, eavesdropping on their conversations, and reading their journals. Defendant’s conduct is both illegal and offensive: indeed, a recent study conducted by the Electronic Privacy Information Center, a respected thought leader regarding digital privacy, found that: (1) nearly 9 in 10 adults are “very concerned” about data privacy, and (2) 75% of adults are unaware of the extent to which companies gather, store, and

1 exploit their personal data. See <https://archive.epic.org/privacy/survey/> (last  
2 downloaded August 2022).

3 11. Within the past year, Plaintiff visited Defendant's Website and  
4 communicated with a representative of Defendant through the website chat feature.  
5 Given the nature of Defendant's business, such communications can be sensitive,  
6 private, and often embarrassing.

7 12. Unbeknownst to website visitors, Defendant's chat platform creates and  
8 stores a transcript of every chat conversation using secretly embedded wiretapping  
9 technology. The transcript is an exact copy of every conversation between any website  
10 visitor and the Defendant's agent.

11 13. Defendant's chat platform creates a record of every detail of every  
12 exchange with every visitor, including the text, visitor's details, and even time stamps  
13 for each message sent by the visitor. The platform has end-to-end features including  
14 chat transfer management, invisible chat viewing, and chat history documentation.

15 14. The record (including the transcript) of every such chat is automatically  
16 sent to and shared with a third party for backup and storage purposes. Transcripts are  
17 then available to any credentialed user.

18 15. Defendant did not inform Plaintiff, or any of the Class Members, that  
19 Defendant was secretly monitoring, recording, and sharing their communications.

20 16. Defendant did not obtain Plaintiff's or the Class Members' consent to  
21 intercepting, monitoring, recording, and sharing the electronic communications with the  
22 Website.

23 17. Plaintiff and Class Members did not know at the time of the  
24 communications that Defendant was secretly intercepting, monitoring, recording, and  
25 sharing the electronic communications.

### 26 **CLASS ALLEGATIONS**

27 18. Plaintiff brings this action individually and on behalf of all others similarly  
28 situated (the "Class") defined as follows:

**All persons within California who within one year of the filing of this Complaint: (1) visited Defendant's website, and (2) whose electronic communications were intercepted, recorded, monitored, and/or shared by Defendant without prior express consent.**

19. NUMEROSITY: Plaintiff does not know the number of Class Members but believes the number to be in the tens of thousands, if not more. The exact identities of Class Members may be ascertained by the records maintained by Defendant.

20. COMMONALITY: Common questions of fact and law exist as to all Class Members, and predominate over any questions affecting only individual members of the Class. Such common legal and factual questions, which do not vary between Class members, and which may be determined without reference to the individual circumstances of any Class Member, include but are not limited to the following:

- a. Whether Defendant caused Plaintiff's and the Class's electronic communications with the Website to be recorded, intercepted and/or monitored;
- b. Whether Defendant violated CIPA based thereon;
- c. Whether Plaintiff and Class Members are entitled to statutory damages pursuant to Cal. Penal Code § 631(a);
- d. Whether Plaintiff and Class Members are entitled to punitive damages pursuant to Cal. Civil Code § 3294; and
- e. Whether Plaintiff and Class Members are entitled to injunctive relief.

21. TYPICALITY: As a person who visited Defendant's Website and had her electronic communications recorded, intercepted and monitored, Plaintiff is asserting claims that are typical to the Class.

22. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals with interests that are actually or potentially adverse to

1 or in conflict with the class or whose inclusion would otherwise be improper are  
2 excluded.

3 23. SUPERIORITY: A class action is superior to other available methods of  
4 adjudication because individual litigation of the claims of all Class Members is  
5 impracticable and inefficient. Even if every Class Member could afford individual  
6 litigation, the court system could not. It would be unduly burdensome to the courts in  
7 which individual litigation of numerous cases would proceed.

### 8 **CAUSE OF ACTION**

#### 9 **Violations of the California Invasion of Privacy Act**

#### 10 **Cal. Penal Code § 631**

11 24. Section 631(a) of California's Penal Code prohibits and imposes liability  
12 upon any entity that "by means of any machine, instrument, contrivance, or in any other  
13 manner," (1) "intentionally taps, or makes any unauthorized connection, whether  
14 physically, electrically, acoustically, inductively, or otherwise, with any telegraph or  
15 telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument  
16 of any internal telephonic communication system," or (2) "willfully and without the  
17 consent of all parties to the communication, or in any unauthorized manner, reads, or  
18 attempts to read, or to learn the contents or meaning of any message, report, or  
19 communication while the same is in transit or passing over any wire, line, or cable, or is  
20 being sent from, or received at any place within this state" or (3) "uses, or attempts to  
21 use, in any manner, or for any purpose, or to communicate in any way, any information  
22 so obtained, or who aids, agrees with, employs, or conspires with any person or persons  
23 to unlawfully do, or permit, or cause to be done any of the acts or things mentioned  
24 above in this section".

25 25. Section 631 of the California Penal Code applies to internet  
26 communications and thus applies to Plaintiff's and the Class's electronic  
27 communications with Defendant's Website. ("Though written in terms of wiretapping,  
28 Section 631(a) applies to Internet communications. It makes liable anyone who 'reads,

1 or attempts to read, or to learn the contents’ of a communication ‘without the consent of  
 2 all parties to the communication.’ Cal. Penal Code § 631(a).” *Javier v. Assurance IQ,*  
 3 *LLC*, 21-16351, 2022 WL 1744107, at \*1 (9th Cir. May 31, 2022).

4 26. The software employed by Defendant on its Website to record Plaintiff’s  
 5 and the Class’s electronic communications qualifies as a “machine, instrument,  
 6 contrivance, or ... other manner” used to engage in the prohibited conduct alleged  
 7 herein.

8 27. At all relevant times, Defendant intentionally caused the internet  
 9 communication between Plaintiff and Class Members with Defendant’s website to be  
 10 intercepted, recorded, stored, and transmitted to a third party.

11 28. At all relevant times, Defendant willfully, and without the consent of all  
 12 parties to the communication, allowed the contents of electronic communications of  
 13 visitors to its website to be accessed by third parties.

14 29. Plaintiff and Class Members did not consent to any of Defendant’s actions  
 15 in implementing wiretaps on its Website, nor did Plaintiff or Class Members consent to  
 16 Defendant’s intentional access, interception, recording, monitoring, reading, learning  
 17 and collection of Plaintiff and Class Members’ electronic communications with the  
 18 Website.

19 30. Defendant’s conduct constitutes numerous independent and discreet  
 20 violations of Cal. Penal Code § 631(a), entitling Plaintiff and Class Members to  
 21 injunctive relief and statutory damages of at least \$2,500.00 per violation.

### 22 **PRAYER FOR RELIEF**

23  
 24 WHEREFORE, Plaintiff prays for the following relief against Defendant:

- 25 1. An order certifying the Class, naming Plaintiff as the representative
- 26 of the Class and Plaintiff’s attorneys as Class counsel;
- 27 2. An order declaring Defendant’s conduct violates CIPA;

1           3.     An order of judgment in favor of Plaintiff and the Class and against  
2 Defendant on the cause of action asserted herein;

3           4.     An order enjoining Defendant's conduct as alleged herein and any  
4 other injunctive relief that the Court finds proper;

5           5.     Statutory damages to Plaintiff and the Class pursuant to Cal. Penal  
6 Code § 631(a);

7           6.     Punitive damages to Plaintiff and the Class pursuant to Cal. Civil  
8 Code § 3294;

9           7.     Prejudgment interest;

10          8.     Reasonable attorneys' fees and costs; and

11          9.     All other relief that would be just and proper as a matter of law or  
12 equity, as determined by the Court.

13 Dated: August 16, 2022

PACIFIC TRIAL ATTORNEYS, APC

14  
15 By:  \_\_\_\_\_

16 Scott. J. Ferrell  
17 Attorneys for Plaintiff  
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